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Town of Stow
PLANNING BOARD

380 Great Road
Stow, Massachusetts 01775

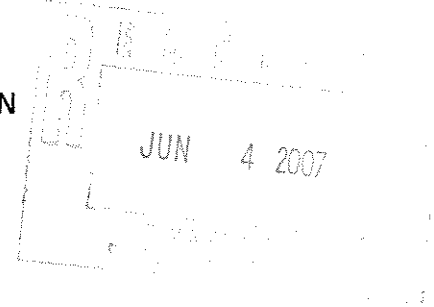
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NOTICE OF DECISION AND DECISION

**WIRELESS SERVICE FACILITY
SITE PLAN APPROVAL
&
SPECIAL PERMIT MODIFICATION**

**Omnipoint Communications, Inc.,
A wholly owned subsidiary of T-Mobile USA, Inc.
339 Great Road**

May 22, 2007



1. Application

This document is the DECISION of the Stow Planning Board (hereinafter, the Board) on the Petition of Omnipoint Communications, Inc., A wholly owned subsidiary of T-Mobile USA, Inc. (hereinafter, the Petitioner) for property located at 339 Great Road.

This decision is in response to an application filed by the Petitioner for a Site Plan Approval and Petition for a Special Permit Modification for a Wireless Service Facility (hereinafter the Petition), submitted to the Board on February 20, 2007, pursuant to Sections 3.11, 9.2 and 9.3 of the Stow Zoning Bylaw (hereinafter the Bylaw) and the Rules and Regulations for a Wireless Service Facility (hereinafter the Rules). The Petitioner seeks permission to modify a pre-existing non-conforming Wireless Service Facility, in connection with the Applicant's proposed installation of a Wireless Service Facility on the property.

2. Petitioner

Omnipoint Communications, Inc.,
A wholly owned subsidiary of T-Mobile USA, Inc.
15 Commerce Way, Suite B
Norton, MA 02706

Property Owner

First Parish Church - Unitarian
339 Great Road
Stow, MA 01775

3. Location

Said property is located at 339 Great Road and is shown on the Stow Property Map Sheet U-10 as Parcel 34-1 (hereinafter, the Site).

4. Board Action

After due consideration of the Petition, the record of proceedings, and based upon the findings and conclusions set forth below, the Board, on May 22, 2007, by a vote of four members present at the public hearing, voted to **GRANT** a Special Permit Modification under Sections 3.9, 3.11 and 9.2 of the Bylaw, and Site Plan Approval under Sections 3.11 and 9.3 of the Bylaw.

EXHIBIT 3 Additional information submitted by the Petitioner:

1. Steeple lease with option

EXHIBIT 4 Comments received from other Town Boards and Committees:

1. Memo from Stow Historical Commission, dated March 2, 2007

Exhibits 1 through 3 are referred to herein as the Petition.

7. FINDINGS, CONCLUSIONS and CONDITIONS

Based upon its review of the Exhibits and the record of the proceedings, the Board finds and concludes that:

- 7.1 **Finding** - The Petition shows a Wireless Service Facility on a portion of Parcel 25 on Assessors Map Sheet U-9, located within the Residential District.
- 7.2 **Finding** - The Property, located in the Residential District, is currently utilized by Sprint Spectrum, L. P., as a Wireless Service Facility within the steeple of the First Parish Church – Unitarian, subject to a Special Permit Granted by the Board prior to adoption of the Wireless Service Facility Overlay District on February 12, 2001. This permit required that the owner permit other users to use the facility upon payment of reasonable charge.
- 7.3 **Finding** - The Petitioner proposes to modify the pre-existing non-conforming Wireless Service Facility at the First Parish Church – Unitarian to install, operate, and maintain a Wireless Service Facility within the belfry of the First Parish Church – Unitarian.
- 7.4 **Finding** - Section 3.11 of the Bylaw designates the Planning Board as the Special Permit Granting Authority for Wireless Service Facilities, and Section 3.9 of the Bylaw removes the adjudication of alterations and extensions to pre-existing non-conforming wireless service facilities from the Board of Appeals (where it would otherwise be adjudicated pursuant to M.G.L. c.40A, s.6 but for Section 3.9.1 of the Stow Zoning Bylaw), directing such adjudication to the Planning Board, subject to the terms and requirements of Section 3.11 of the Bylaw.
- 7.5 **Finding** - Section 3.11.16 of the Bylaw gives the Planning Board the authority to determine that this Petition is a modification of a Wireless Service Facility.
- 7.6 **Finding** - Section 3.11.16.1.a of the Bylaw gives the Planning Board the authority to grant a Special Permit Modification with respect to the number of facilities permitted on the site.
- 7.7 **Finding** - The Board finds the Petition to be a modification of a previously issued Special Permit, granted to Sprint Spectrum, L. P., at the same property. The proposed Wireless Service Facility will be concealed within the Church, similar to the Special Permit previously granted to Sprint Spectrum, L. P. Once the facility is installed, there will be no visual impact to the building or the site.
- 7.8 **Finding** - The proposed Wireless Service Facility will be located beneath the existing Sprint Wireless Service facility.

Condition – The original structure and materials shall be retained as much as possible.

7.12 **Finding** - The proposed use, as conditioned herein, is in harmony with the general purpose and intent of the Zoning Bylaw and the Rules.

7.13 **Finding** - The Board makes the following findings in compliance with Section 3.11.12.1 of the Bylaw:

- A. The Petitioner has adequately demonstrated, by an Affidavit of a Radio Frequency Expert and Radio Frequency Propagation maps, a gap in its coverage network indicating they are not currently providing adequate coverage to the extent that the Town is required to accommodate such coverage under federal law, without the Special Permit.
- B. The Petitioner has adequately demonstrated, by an Affidavit by a Radio Frequency Expert and the Radio Frequency Propagation maps, it is unable to provide adequate coverage in its coverage network utilizing the existing Wireless Service Facilities located within the Wireless Service Facility Overlay District.
- C. The Petition includes reasonable measures to mitigate the potential adverse impact of the facility. The Petition, as proposed and conditioned herein, is designed to mitigate any potential adverse impacts of the proposed Wireless Service Facility by concealing the proposed facility within the existing church.
- D. The Petitioner has demonstrated, by radio frequency emissions calculations and statements by an Affidavit by a Radio Frequency Expert, that the proposed facility will comply with FCC regulations concerning radio frequency emissions.

Condition - The Petitioner shall comply with all applicable FCC regulations and any applicable radio frequency monitoring requirements.

- E. The Board finds the proposed use, as conditioned herein, is designed to accommodate the maximum number of users technologically practical. The Petitioner is co-locating the proposed Wireless Service Facility, bringing the total number of facilities within the Church to two (2) and has stated it has no objection to the use of the Church by additional users, to the extent that such use is not inconsistent with the Petitioner's proposed use.

The Board finds that an additional Wireless Service Facility is appropriate at the site.

- F. The Bylaw requires that the Petitioner agree to rent or lease available space on any Tower it controls within the Town of Stow or contiguous towns, in the terms of a fair-market lease, without discrimination to other Wireless Service Carriers. The Petitioner stated it does not own or to otherwise have control over the existing Church. The Petitioner further states it has no objection to the use of the Church by additional users, to the extent that such use is not inconsistent with the Petitioner's proposed use.
- G. The Petitioner has demonstrated, by the radio frequency emissions calculations, that the proposed Wireless Service Facility will comply with Federal Communications Commission and Massachusetts Department of Public Hearing regulations concerning radio frequency emissions.

7.19 **Condition** – The proposed Wireless Service Facility shall require an annual Operating Permit from the Town of Stow Building Inspector.

7.20 **Condition** - The Owner or operator in charge of the Wireless Service Facility shall certify annually to the Building Inspector that the Wireless Service Facility is in compliance with the standards of the Federal Communications Commission, the Federal Aviation Administration, the Massachusetts Aeronautics Commission, the Massachusetts Department of Public Health regulations, and the American National Standards Institute and evidence of required maintenance shall be filed with the Building Inspector by the Special Permit holder.

7.21 **Finding** - The Board makes the following findings in compliance with Section 9.2.6 of the Bylaw:

The proposed use, as conditioned herein:

- is in harmony with the purpose and intent of this Bylaw;
- will not be detrimental or injurious to abutting properties or ways, the neighborhood, community amenities or the Town of Stow;
- is appropriate for the site for which the petition is submitted and is related harmoniously to the terrain and to the use, scale and proportions of existing and proposed buildings in the immediate vicinity that have functional or visual relationship to the proposed use;
- includes sufficient mitigating measures, which shall be implemented as part of the Special Permit for any adverse effects noted in the Development Impact Statement, reports from Town boards and agencies, reports from consultants and public hearings;
- will result in no pollution or contamination of the ground water, a ground water recharge area, a well, pond, stream, watercourse or inland wetland;
- will only be visited for routine maintenance, resulting in an average daily trip generation rate of 0.07, and therefore, will result in no significant effect on the "level of service" (LOS) of the Town roads or intersections of these roads;
- is unmanned and passive in nature and will be located within the existing Church and it does not require municipal services such as police, fire, ambulance, and therefore; will result in no significant effect on level of service for any service provided by the Town;
- will result in no redirection of existing surface water runoff such that there would be material impact on abutting parcels or downstream properties unless an appropriate easement is obtained to an existing watercourse;
- will result in no transport by air or water of erodible material beyond the boundary line of the LOT (See also Section 3.8. Use Regulations, General);
- will have no material impact on pedestrian traffic on or near the property; and
- will comply with all requirements of Site Plan Approval and all other applicable requirements of this Bylaw.

7.22 **Waiver** - Board action on the requested waivers from Section 3.11.11, Wireless Service Facility Regulations, of the Bylaw are as follows:

- Subsection c. – A Wireless Service Facility currently exists at the site and the proposed Wireless Service Facility will result in no visual impact to the building or the site. Therefore, the Board waives the requirement for an appraisal, prepared by a state-certified real estate appraiser, of the economic impact on property values

statement listing the existing and maximum future projected measurements of noise from the proposed Wireless Service Facility, measured in decibels.

- 7.26 **Waiver** - The proposed Wireless Service Facility, as conditioned herein, will result in no visual impact to the building and no change to existing site conditions. Therefore, the Board accepts the plans, as submitted, as adequate for the Petition and waives strict compliance to the plan requirements stated in Section 3.4 of the Rules.
- 7.27 **Waiver** - Section 3.5 – The proposed Wireless Service Facility will be concealed within the church structure and will result in no impact on drainage on the property. Therefore, the Board waives the drainage calculations requirements stated in Section 3.5 of the Rules.
- 7.28 **Waiver** - The proposed Wireless Service Facility will not necessitate removal of earth. Therefore, the Board waives the requirement for earth removal calculations as stated in section 3.6 of the Rules.
- 7.29 **Waiver** - The proposed Wireless Service Facility is not located in the Water Resource Protection District. Therefore, the Board waives the requirement to demonstrate compliance with all applicable portions of Section 5.2, Water Resource Protection District, of the Bylaw.
- 7.30 **Condition** - The foregoing findings, conditions and waivers have been stated for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Bylaw and the Rules.
- 7.31 **Condition** - This Special Permit applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 7.32 **Condition** - Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.33 **Condition** - This Special Permit shall lapse, if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under the Special Permit is not continued through to completion as continuously and expeditiously as is reasonable. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the Special Permit and to require any appropriate modifications of the plan.